

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: B. K. Higgs )  
Dist. 8, Map 108, Control Map 108, Parcel 41.01, ) Tipton County  
S.I. 000 )  
Residential Property )  
Tax Year 2007 )

### INITIAL DECISION AND ORDER

### Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$10,800	\$107,300	\$118,100	\$29,525

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on February 12, 2008 in Covington, Tennessee. In attendance at the hearing were Mr. and Mrs. Higgs, the appellants, Bill Stimpson, Tipton County Property Assessor and Greg Stimpson.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 4900 Highway 14 S. in Brighton, Tennessee. On January 1, 2007, subject property consisted of a .79 acre tract. Pursuant to a sales contract executed on September 27, 2006, the State of Tennessee acquired .215 acres for the widening on Highway 14. Although the State of Tennessee issued a check for the property on October 12, 2006, the deed was not signed until January 3, 2007. The deed was subsequently recorded on January 10, 2007.

## I. Jurisdiction

The facts culminating in this appeal are not in dispute. Mr. Higgs contacted Greg Stimpson in October of 2006 concerning the sale of the .215 acres. Mr. Stimpson advised Mr. Higgs that his appraisal would be adjusted after the deed was recorded. Mr. Stimpson assumed this would occur by December 31, 2006, but did not advise Mr. Higgs of this assumption.

Mr. Higgs took no further action until receiving his tax bill in October of 2007. At that time, Mr. Higgs once again contacted Greg Stimpson. Mr. Stimpson advised Mr. Higgs that he would adjust his appraisal for tax year 2008, but no action would be taken for tax year 2007 since the deed was signed and recorded after January 1, 2007, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). Mr. Higgs proceeded to file a direct appeal with the State Board of Equalization which was received on October 10, 2007.



The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

*Associated Pipeline Contractors, Inc.*, Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovets*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayers must show that circumstances beyond their control prevented them from appealing to the Tipton County Board of Equalization.

The administrative judge finds that the taxpayers established reasonable cause for not appealing to the Tipton County Board of Equalization. The administrative judge finds Mr. Higgs reasonably assumed that no further action was required on his part after speaking with Mr. Stimpson in October of 2006. The administrative judge finds Mr. Stimpson did not verbalize his assumption that the deed would be recorded by the end of the year. Although the administrative judge has no doubt Mr. Stimpson acted in good faith, the administrative judge finds that the Assessment Appeals Commission has shown great sensitivity in situations where a taxpayer has been misled, whether intentionally or unintentionally, by government officials. *See Memphis Mall Holdings, LLC* (Assessment Appeals Commission, Shelby Co., Tax Year 2003).

Ironically, the administrative judge finds that in all likelihood the ownership of the .215 acres occurred prior to the State of Tennessee issuing a check on October 12, 2006.



Presumably, a court order in the form of a writ of possession or the like had been issued. Unfortunately, none of the pertinent documents were introduced into evidence.

The administrative judge finds that even if it is assumed *arguendo* that ownership did not transfer until January 3, 2007 (the date the deed was signed), the taxpayers would still be entitled to relief for either of two reasons.<sup>1</sup> First, on January 1, 2007, any prospective buyer would have known that the .215 acres was under contract for sale to the State of Tennessee. Such a contract would unquestionably have a material effect on subject property's market value on January 1, 2007. Second, Tenn. Code Ann. § 67-5-201(b) requires a prorated assessment when real property is transferred between exempt and nonexempt owners. Thus, the .215 acres would only be assessable to the taxpayers for three days if ownership transferred on January 3, 2007.

## II. Value

The taxpayers contended that subject property should be valued at \$78,430. In support of this position, the taxpayers introduced into evidence portions of an appraisal prepared by Tennessee Department of Transportation's right of way appraiser, Douglas B. Hall. Essentially, Mr. Hall concluded that subject property had a market value of \$137,700 prior to the acquisition of the .215 acres.<sup>2</sup> Mr. Hall estimated total damages at \$45,732 resulting in a market value indication of \$91,968 after the acquisition. Mr. Hall estimated the value of the land and improvements at \$4,508 and \$87,460 respectively.

The taxpayers maintained that subject property should be appraised by reducing the current appraisal by the 33.21% loss in value calculated by Mr. Hall. The taxpayers asserted subject property experienced a significant loss in value after the acquisition for several reasons. First, the taxpayers argued that the acquisition left an inadequate reserve for the septic system. Second, the acquisition took 32 trees and a significant portion of the front yard. The residence is now 42 feet from the right of way rather than 92 feet. Third, Mr. Hall's appraisal indicates that after the acquisition subject lot does not meet the minimum lot size required under local zoning regulations. Consequently, Mr. Hall concluded that "the highest and best use is anticipated to change from residential home site to assemblage." The taxpayers also questioned whether their home could be rebuilt in the event of fire or the like.

The assessor contended that subject property should remain valued at \$118,100. In support of this position, the testimony of Greg Stimpson was offered into evidence. Essentially, Mr. Stimpson argued that no change in value should be made for 2007 since the deed was not signed or recorded until after the relevant assessment date.

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<sup>1</sup> The administrative judge finds that ownership transfers when the deed is signed not when the deed is recorded. Technically, a buyer does not have to record a deed despite the wisdom of doing so.

<sup>2</sup> Mr. Hall estimated subject property's market value at \$137,700 and \$150,400 by the sales comparison and cost approaches respectively. Mr. Hall placed primary weight on the sales comparison approach in his reconciliation.



For all practical purposes, Mr. Stimpson argued in the alternative that subject property should be appraised at \$115,100 as it will be for tax year 2008. According to Mr. Stimpson, the relevant land schedule indicates a land value of \$7,800 for the remaining .58 acres. Mr. Stimpson asserted that subject dwelling has not experienced a diminution in value. Mr. Stimpson also took issue with the taxpayers' contention that the acquisition affected the reserve area for the septic system.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$104,300. The administrative judge finds that subject residence should be depreciated an additional 10% due to external obsolescence. In addition, the administrative judge finds that the assessor's reduced land value for tax year 2008 should be adopted for tax year 2007 as well.

Since the taxpayers are appealing from the determination of the Tipton County Board of Equalization, the burden of proof is on the taxpayers. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds the taxpayers introduced sufficient evidence to establish that subject property has experienced a significant diminution in value after the acquisition. However, the administrative judge must also find that the taxpayers introduced insufficient evidence to quantify the loss in value.

The administrative judge finds Mr. Higgs' contention of value was arrived at by applying Mr. Hall's estimated loss in value for the remainder to the property record card. The administrative judge finds that such an approach does not comport with generally accepted appraisal practices and must be rejected.

The administrative judge finds that Mr. Hall's appraisal cannot receive the weight it might otherwise possibly receive because he was not present to testify or undergo cross-examination. See *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

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. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2. Moreover, only portions of Mr. Hall's appraisal were introduced into evidence. Significantly, the underlying cost and sales comparison approaches are not in the record.<sup>3</sup>

Respectfully, the administrative judge finds that the assessor introduced insufficient evidence to substantiate his estimate of value. The administrative judge finds that no comparable sales were introduced into evidence. Moreover, the administrative judge finds that Tipton County was last reappraised in 2002. Thus, subject residence has been depreciated by a mere 3% because it was constructed in 1999.

The administrative judge finds that subject remainder experiences a loss in value for any of several reasons. Surely, the loss of over 30 trees and the proximity of the right of way decreasing from approximately 92 feet to 42 feet materially affects the value of subject residence. Moreover, the non-conforming remainder raises a host of legal issues concerning the future use of subject property. Mr. Hall discusses those issues at page 15 of his appraisal report.

The administrative judge finds that the preponderance of the evidence supports two modifications to the property record card which is the basis for the current appraisal. First, the administrative judge finds that the residence should be depreciated an additional 10% to account for external obsolescence. Second, the administrative judge finds that the assessor's reduction in land value for 2008 should also apply to 2007. These adjustments result in land and improvement values of \$7,800 and \$96,500 respectively.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$7,800	\$96,500	\$104,300	\$26,075

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12

<sup>3</sup> Mr. Hall briefly discusses remainder sales from a study dated May 1, 1995. Presumably, Mr. Hall analyzed recent sales and adjusted them in accordance with generally accepted appraisal practices.

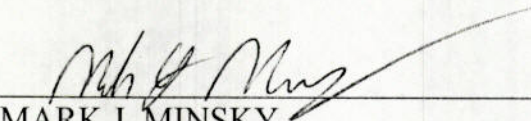


of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of February, 2008.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. B. K. Higgs  
Bill Stimpson, Assessor of Property